RE TAN SRI AMIN SHAH OMAR SHAH; EX P AFFIN BANK BHD

HIGH COURT MALAYA, KUALA LUMPUR
MOHD HISHAMUDIN YUNUS J
[BANKRUPTCY NOTICE/PETITION NO: D1-29-731-2005]
15 AUGUST 2008

BANKRUPTCY: *Petition - Creditor's petition - Presentation of - Whether pursuant to r. 215 Bankruptcy Rules 1969 - Whether officer who signed petition authorised by creditor - Whether a creditor was entitled in law to pursue all remedies to recover moneys lent*

This was an appeal to the judge in chambers by the debtor against the decision of the senior assistant registrar dismissing the application by the debtor to stay the proceeding and/or to strike out the creditor's bankruptcy petition issued against the debtor. Briefly, on 9 March 2005, the creditor filed a bankruptcy notice against the debtor demanding payment of a sum of RM3,222,477.89 which was due to the creditor under a judgment obtained by the creditor in a Kuala Lumpur High Court. Since the debtor failed to pay within the stipulated period, the creditor took out a creditor's petition on 3 March 2006. The petition was signed by an officer of the creditor corporation, namely, one Encik Mohamed Aslam Khan Gulam Hassan, the senior vice president of the creditor corporation. The issues that arose were (i) that the officer who had signed the creditor's petition and the affidavit verifying petition was not authorised by the creditor; (ii) that the judgment creditor failed to take any step to realize the legal charges which was in the form of landed properties worth RM3 million towards satisfaction or reduction of the debtor's indebtedness.

Held (dismissing appeal with costs):

(1) The presentation of the petition was clearly pursuant to the second (alternative) limb as provided for by r. 215 of the Bankruptcy Rules 1969. The petition was presented by the corporation (the company, Affin Bank Berhad) and was signed by a duly authorised officer of the company, Mohamad Aslam Khan Ghulam Hassan, a senior vice president, special asset management, of the bank/corporation (the creditor). The officer signing did not need to be armed with a power of attorney. All that he was required to have was the authority

to sign and to present the petition; and in the petition and verifying affidavit he must state that he was an officer of the company/creditor and that as an officer he was duly authorised by the company to sign and to present the petition on behalf of the company. There was affidavit evidence to show that Aslam had derived his authority from the creditor company board of directors. By this resolution, Aslam was empowered to represent the creditor in any court proceedings to sign, execute or affirm all documents, letters, notices, affidavits, petitions, in respect of, or in relation to, or in connection with or rising from such court proceedings, for and on behalf of the creditor. (paras 8, 9, 10, 11 & 12)

(2) There was no merit in the debtor's argument that there was an alleged failure on the part of the creditor to take any step to realize the legal charges which was in the form of landed properties worth RM3 million towards satisfaction or reduction of the debtor's indebtedness. A chargor or creditor was entitled in law to pursue any or all remedies to recover monies lent (*Low Lee Lian v. Ban Hin Lee Bank Bhd)*. It was held in *Bank Bumiputra Malaysia Bhd v. Esah Abdul Ghani* that the court had no jurisdiction either to dismiss or stay the creditor's petition on the ground that the bank did not proceed with the foreclosure proceedings. (paras 17 & 18)

Case(s) referred to:

Bank Bumiputra (M) Bhd v. Esah Abdul Ghani [1985] 2 CLJ 409; [1985] CLJ (Rep) 41 SC ***(refd)***

In Re Kang Chong Yeow; Ex p Mivan Far East Sdn Bhd [2001] 8 CLJ 226 HC ***(refd)***

Low Lee Lian v. Ban Hin Lee Bank Bhd [1997] 2 CLJ 36 SC ***(refd)***

Re Ho Fok, Ex p Ann Bee (M) Sdn Bhd [2002] 2 CLJ 223 HC ***(refd)***

Legislation referred to:

Bankruptcy Rules 1969, r. 215

For the debtor - G Gowri; M/s Thanggaya Khoo & Co

For the creditor - SL Goh; M/s Shook Lin & Bok

Reported by Suhainah Wahiduddin

JUDGMENT

Mohd Hishamudin Yunus J:

[1] Enclosure 64 is an appeal to judge in chambers by the debtor against the decision of the learned senior assistant registrar of 9 October 2007 dismissing the application by the debtor in encl. 51. The application was made by the debtor to stay the proceeding and/or to strike out the creditor's bankruptcy petition which was issued against the debtor.

[2] I had dismissed the appeal on 9 July 2008 with costs, and I now give the grounds for my decision.

[3] On 9 March 2005 the creditor filed a bankruptcy notice against the debtor demanding payment of a sum of RM3,222,477.89 which was due to the creditor under a judgment obtained by the creditor in a Kuala Lumpur High Court (Commercial Division) civil suit in case No: D3-22-90-2003 on 9 December 2003. Since the debtor failed to pay within the stipulated period, the creditor took out a creditor's petition on 3 March 2006. The petition was signed by an officer of the creditor corporation, namely, one Encik Mohamed Aslam Khan bin Gulam Hassan, the Senior Vice President of the creditor corporation. He also signed the affidavit verifying the petition. In view of one of the issues raised by the debtor, I reproduce below the relevant part of the creditor's petition (encl. 26) and the affidavit verifying the petition (encl. 27).

Creditor's Petition

We, Affin Bank Berhad of 7th Floor, Menara Affin, 80, Jalan Raja Chulan, 50200 Kuala Lumpur by Mohamad Aslam Khan bin Ghulam Hassan, a Senior Vice President, Special Asset Management for the Judgment creditor and duly authorized to sign and present this petition on behalf of Affin Bank Berhad, hereby petition that …

Dated this 3 Mar 2006

Signed by the Judgment Creditor in my presence: Affin Bank Berhad

(Signed) …

(Signed) …

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LAU KEE SERN (Signature of Witness) Advocate & Solicitor	MOHAMAD ASLAM KHAN BIN GHULAM HASSAN Senior Vice President, Special Asset Management

Affidavit Of Truth Of Statement In Petition

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I, MOHAMAD ASLAM KHAN BIN GHULAM HASSAN (NRIC No. 500805-10-5143) a Malaysian citizen of full age and in the employment of Affin Bank Berhad 7th Floor, Menara Affin, 80, Jalan Raja Chulan, 50200 Kuala Lumpur, a Senior Vice President, Special Asset Management for the Judgment Creditor named in the petition hereto annexed, affirm and say as follows:

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1. That I am duly authorized by the Judgment Creditor to make this affidavit on its behalf.

2. That the several statements in the said petition are within my own knowledge true.

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To an affidavit by one deponent named MOHAMAD ASLAM KHAN BIN GHULAM HASSAN affirmed on 03-03-2006 at Kuala Lumpur	]]]]	(signed)

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Before me,
(signed)
...
Commissioner for Oaths
Kuala Lumpur

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[4] Before the senior assistant registrar ('the registrar'), the debtor filed a summons-in-chambers (encl. 51) to strike out the creditor's petition based on the following grounds:

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(1) that the officer who had signed the creditor's petition and the affidavit verifying petition was not authorized by the creditor; and

(2) that the judgment creditor failed to take any step to realize the legal charges which was in the form of landed properties worth RM3 million towards satisfaction or reduction of the debtor's indebtedness.

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[5] The application was dismissed by the learned registrar and the debtor appealed to the judge in chambers. A

[6] I shall now deal with the first ground. The learned counsel for the debtor in his written submission submits that the officer, Mohamad Aslam, who signed the petition did not have the B authority to sign and to present the same on behalf of the creditor. The reason put forward by counsel for the debtor for the absence of authority on the part of the officer is that Encik Aslam had not adhered strictly to the power of attorney issued to him by the creditor and that in any event the power of attorney had C been 'tampered' with. Counsel's argument on the point pertaining to the power of attorney is detail and lengthy. However, I do not in this judgment propose to go into the details of counsel's argument as I am of the view, that in the light of the fact that the petition itself does not state that the signing and presentation D of the petition by the officer was pursuant to any power of authority, such an argument is irrelevant.

[7] The procedure for the presentation of a petition on behalf of a corporation is provided for under r. 215 of the Bankruptcy E Rules 1969. It states, *inter alia*, that a petition may be presented by the corporation and signed by the officer on its behalf. The provision reads:

> **215. Officer of corporation, etc.** F
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> Where a corporation presents a petition or takes any other action under this Act, the officer of the corporation may act in his own name, stating that he is such officer duly authorized under seal; **but a petition may be presented by the corporation, and signed by the officer on its behalf.** Any person chosen by the corporation to act for it as agent, is an "officer "within section G 133 and if duly authorized under seal can act for the corporation. (emphasis added.)

[8] Now, upon examining the manner the petition is presented, the presentation of the petition in the present case is clearly H pursuant to the second (alternative) limb as provided for by the above r. 215, that is to say, pursuant to that part of the provision that stipulates:

> … a petition may be presented by the corporation, and signed by the officer on its behalf … I

[9] This means that the petition is presented by the corporation (that is the company, Affin Bank Berhad) and is signed by a duly authorized officer of the company. That officer, as I have mentioned earlier, is Mohamad Aslam Khan bin Ghulam Hassan, a Senior Vice President, Special Asset Management, of the bank/corporation (the creditor). It is significant to note that the petition states that he is an officer of the creditor company and that he has been authorised to sign and to present the petition on behalf of the creditor company. And the petition bears his signature.

[10] When the presentation is pursuant to the second (alternative) limb of r. 215, the officer signing does not need to be armed with a power of attorney. All that he is required to have is the authority to sign and to present the petition; and in the petition and verifying affidavit he must state that he is an officer of the company/creditor and that as an officer he is duly authorized by the company to sign and to present the petition on behalf of the company. Since in the present case the signing and presentation of the petition was by an authorised officer of the creditor pursuant to r. 215, therefore, the argument of the debtor's counsel pertaining to the power of attorney issued to the officer Mohamad Aslam, even if a power of attorney had been issued to him, is totally irrelevant.

[11] Since Encik Aslam's authority is being challenged by the debtor, I must add here that there is affidavit evidence to show that Encik Aslam derived his authority from the creditor company board of directors' resolution dated 27 February 2006. By this resolution, Encik Aslam was empowered to represent the creditor in any court proceedings to sign, execute or affirm all documents, letters, notices, affidavits, petitions, in respect of, or in relation to, or in connection with or rising from such court proceedings, for and on behalf of the creditor. This resolution was passed before the presentation of the creditor's petition.

[12] Therefore, I found that there is no merit in the contention that the officer Mohamad Aslam Khan bin Ghulam Hassan was not authorized to sign the creditor's petition and the affidavit verifying the petition. It is clear from the creditor's petition that it was signed and presented on behalf of the creditor by Encik Aslam who was duly authorized to bring the proceedings herein against the debtor.

[13] In arriving at the above decision, I am guided by the following cases, namely: A

(a) *In Re Kang Chong Yeow; Ex p Mivan Far East Sdn Bhd* [2001] 8 CLJ 226; and

(b) *Re Ho Fok, Ex p Ann Bee (M) Sdn Bhd* [2002] 2 CLJ 223. B

[14] In *Re Kang Chong Yeow*, Abdul Wahab Patail J ruled:

> It is clear from the first part of rule 215 that where a corporation presents a petition or takes any other action under this Act, it may do so firstly by an officer of the corporation acting in his own name, in which case he has to state that he is such officer duly authorized under seal; and secondly a petition may also be presented by the corporation and signed by an officer of the corporation on its behalf. The next part of the rule applies to a third method of presenting a petition, that is by an agent, who is not an officer of the corporation in the ordinary course, but is deemed to be an officer for the purpose of presenting a petition; and since such agent is an independent entity outside the corporation, he would need to be duly authorized under seal before he can present a petition for the corporation. C D E
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> The proceeding in this case, however, is clearly taken under the second alternative, that is, by the company Mivan Far East Sdn Bhd. The affidavits deposed by James Martin Laughlin states clearly that he is the executive director of the judgment creditor (respondent) and that he has been authorized to make the affidavit on behalf of the respondent. Nothing in this proceeding shows that it is being undertaken by James Martin Laughlin himself on behalf of Mivan Far East Sdn Bhd. In the circumstances, the objection under rule 215 is unsustainable on the facts. Since no authorization under seal is necessary in this case, it is unnecessary to refer to exhibit JML1 in enclosure 67 and therefore the objection under Order 54 rule 1(3A) of the RHC does not arise. F G

[15] In *Ho Fok*, Kang Hwee Gee J said:

> As in *Re Kang Chow Yeow*, the petition in the instant case was signed by a director of the judgment creditor, Mr. Lee Neh @ Lee Pins Ten. It therefore falls squarely within that limb of rule 215 that allows a petition to be 'presented by the corporation, and signed by the officer on its behalf.' It does not therefore require the person to state that he had been authorized under seal. H I

[16] I will now deal with the debtor's second ground. Here the debtor relies on the alleged failure on the part of the creditor to take any step to realize the legal charges which was in the form of landed properties worth RM3 million towards satisfaction or reduction of the debtor's indebtedness, as a ground to strike out the creditor's petition.

[17] There is no merit in this argument as well. It is trite law that a chargor or creditor is entitled in law to pursue any or all remedies to recover monies lent. Gopal Sri Ram JCA, in delivering the judgment of the Federal Court in *Low Lee Lian v. Ban Hin Lee Bank Bhd* [1997] 2 CLJ 36, has this to say:

> Now, it is trite that a chargee/creditor may pursue any or all remedies to recover monies lent by him. He may enforce his statutory charge against the charger by way of proceedings in rem under section 256 of the Code. He may sue the principal debtor (who may or may not be the chargor) upon the personal covenant contained in any loan agreement that was entered into between the parties. He may proceed against the surety who has guaranteed the loan. And he may pursue all of these courses simultaneously, contemporaneously or successively. See *China and South Sea Bank Ltd v. Tan* [1989] 3 All ER 839, 842.

[18] In the Supreme Court case of *Bank Bumiputra (M) Bhd v. Esah binti Abdul Ghani* [1985] 2 CLJ 409; [1985] CLJ (Rep) 41 it was held that the court had no jurisdiction either to dismiss or stay the creditor's petition on the ground that the bank did not proceed with the foreclosure proceedings.

[Appeal dismissed with costs.]